

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

LAZARO MARES,

Plaintiff,

v.

No. 15-cv-0413 SMV

CAROLYN W. COLVIN,
Acting Commissioner of Social Security Administration,

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION
FOR ATTORNEY FEES UNDER EAJA

THIS MATTER is before the Court on Plaintiff's Motion for Attorney Fees Pursuant to the Equal Access to Justice Act, with Memorandum in Support [Doc. 28], filed on October 24, 2016. Plaintiff requests attorney fees in the amount of \$7,042.28. The Commissioner has neither responded, nor filed any notice of an agreed-upon extension. Her lack of response constitutes consent to grant the motion. *See* D.N.M.LR-Civ. 7.1(b). The Court, having considered the motion, the lack of any response in opposition, the record in this case, and the relevant law, and being otherwise fully advised in the premises, **FINDS** that the motion is well-taken and will be **GRANTED**.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Attorney Fees Pursuant to the Equal Access to Justice Act [Doc. 28] is **GRANTED**, and Plaintiff Lazaro Mares is authorized to receive **\$7,042.28** for payment to his attorney for services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

IT IS FURTHER ORDERED that if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, counsel shall refund the smaller award to Plaintiff pursuant to *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) ("Congress harmonized fees payable by the Government under EAJA with fees payable under § 406(b) out of the claimant's past-due Social Security benefits in this manner: Fee awards may be made under both prescriptions, but the claimant's attorney must refun[d] to the claimant the amount of the smaller fee.") (internal quotation marks omitted).

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge
Presiding by Consent